

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**EQUAL EMPLOYMENT
OPPORTUNITY PLAN
AND
EMPLOYMENT DISPUTE RESOLUTION PLAN**

PART A

EQUAL EMPLOYMENT OPPORTUNITY PLAN United States District Court for the Southern District of California

I. PREAMBLE

A. Statement of Policy

The Judicial Conference of the United States in 1987 directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age, or handicap.

The United States District Court for the Southern District of California adopts this model plan, and the accompanying employment dispute resolution plan, providing equal employment opportunity to all persons or classes of persons regardless of their race, color, national origin, gender, religion, age, disability and/or sexual orientation¹.

Each appointing officer and supervisor will promote equal employment opportunity through a plan encompassing all facets of employment actions and conditions including recruitment, hiring, training, promotion, advancement, and supervision.

Each appointing officer and supervisor will promote a court or office environment free of discrimination and discriminatory harassment. Any instances of discriminatory harassment for which a person seeks relief or assistance should be immediately reported. All employing offices shall address promptly all complaints alleging discrimination or discriminatory harassment and shall pursue resolution of each complaint in accordance with the procedures described in Part B - Employment Dispute Resolution Plan.

Retaliation by an appointing officer or supervisor, or by any other employee against an employee for having filed a discrimination or discriminatory harassment complaint, or against any persons involved in the processing of a complaint such as employee representatives or witnesses, is prohibited and constitutes grounds for disciplinary action. The filing of frivolous or harassing complaints, however, may also be grounds for disciplinary action.

This plan, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the federal courts as such standards have been approved by the Judicial Conference of the United States.

Neither this plan, nor the Employment Dispute Resolution ("EDR") procedures set forth in Part B, shall constitute a contract or create any legally enforceable obligation. No actions taken or

documents created or processed pursuant to this plan or the EDR procedures related thereto are discoverable in any court proceeding, except as to final decisions made available to the public pursuant to Chapter VIII, Section 10 of Part B.

B. Definitions.

1. **Age.** At least 40 years of age at the time of the alleged discrimination except for the age restrictions prescribed by 5 U.S.C. § 8335(b) and 8425(b) and described in the Judiciary Salary Plan and the Court Personnel System, applying to the appointment and retirement of federal probation and pretrial services officers.
2. **Disability.** Formerly referred to as “handicap.” Any physical or mental impairment which substantially limits one or more of a person’s major life activities where there is a record of such impairment and the person is regarded as having such impairment. A qualified disabled person is one who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who meets the criteria for appointment².

Certain other conditions that are temporarily disabling such as pregnancy and childbirth are treated as disabilities for purposes of protections afforded under this Plan³.

3. **National origin.** National origin includes ethnicity. Employees of the United States courts must be citizens of the United States or citizens of countries with treaty relations with the United States, as defined by the United States Department of State, or persons subject to the Chinese Student Protection Act, 8 U.S.C. §1255.
4. **Gender.** Discrimination on the basis of marital status or parenthood is also categorized as gender discrimination.
5. **A discrimination complaint** is any allegation that a person has been denied employment, promotion or advancement, or has been affected in any other aspect of employment, because of his or her race, color, national origin, gender, religion, age, disability and/or sexual orientation.

A discrimination complaint also includes allegations of restraint, interference, coercion, discrimination, or reprisal because a person has raised an allegation of discrimination or has served as a representative, a witness, or an EDR Coordinator in connection with a complaint. It does not include complaints relating to other dissatisfactions with a person’s conditions of employment which are commonly known as grievances.

A discrimination complaint may only be filed pursuant to the procedures set forth in Part B.

6. **Sexual harassment** is a form of gender discrimination. Sexual harassment is defined as any unsolicited and/or unwelcome sexual advance, such as an overture, an offer, or request for sexual favors, and/or other verbal or physical conduct of a sexual nature, when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment;⁴ and
 - d. Such conduct is engaged in either the workplace or outside the workplace, during working hours or non-working hours, where there is a direct connection with workplace matters.
7. **Discriminatory Harassment.** Conduct, threats, insinuations, innuendo, or slurs, or other offensive statements or conduct based on race, color, national origin, gender, religion, age, disability and/or sexual orientation directed at an individual or a specific class or group is considered discrimination. Discriminatory harassment also includes violence in the form of intimidation, threats, or assaults made on fellow employees at or away from the workplace. Discipline will be swift and severe for employees who are potentially dangerous.
8. **Employment Actions and Conditions.** Includes all employment and personnel decisions, actions, impacts, terms and conditions of a person's employment. Included are the following: recruitment, hiring, promotions, advancement, work assignments, compensation and benefits, training, education, disciplinary actions, terminations, and other such categories.
9. **Appointing Officer.** For purposes of this Plan only, the definition of appointing officer refers to the court unit executive, if the complainant is an employee of the offices of the Clerk, Probation (including Probation officers), or Pretrial Services. The appointing officer for an employee of a judge's chambers is the respective judge.

II. SCOPE OF COVERAGE

This Equal Employment Opportunity Plan applies to all court personnel, and applicants for positions, defined as follows:

1. All judges and their staffs;
2. District clerk of court and staff;
3. Chief probation and chief pretrial services officers and staffs.

Article III judges may not file a complaint pursuant to this plan. Complaints against judges, as distinct from complaints against employing offices pursuant to Part B in which a judge's conduct may form the factual basis of the complaint, are filed pursuant to judicial misconduct procedures. 28 U.S.C. § 372(c) Complaints about the conduct of the magistrate judge merit screening process should be submitted to the chief judge of the district.

For the purposes of this Plan, all chambers and offices will be described as “employing offices.”

III. ORGANIZATION

A. Implementation

Each appointing officer shall implement this plan or such equal employment opportunity plan as has been approved by the Judicial Council of the Ninth Circuit.

B. Appointing Officers

All appointing officers must ensure that all vacancies, [with the exception of chambers law clerk vacancies], are publicly announced⁵ to attract qualified candidates and that all hiring decisions are based solely on job-related factors. They should make reasonable efforts to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions and for other advantageous employment actions and conditions.

C. Appointing Officers and Supervisors

All appointing officers must apply equal employment opportunity practices and policies in their court units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for such personnel actions and awards recognizing such achievements as may be warranted and available.

D. Employment Dispute Resolution Coordinator

The chief district judge will designate one person from each court unit to be the Employment Dispute Resolution (EDR) Coordinator. The EDR Coordinator should be a person committed to the goals of equal employment opportunity with the experience and training necessary to perform the investigative and record-keeping aspects of the position. An appointing officer should not be designated as the EDR Coordinator, except in very small courts where there is no one employed in the court unit except the appointing officer who is qualified to carry out the responsibilities of the EDR Coordinator⁶.

The EDR Coordinator will be responsible for preparing statements, collecting, analyzing, and consolidating statistical data, and submitting an annual EEO/EDR report as described in Sections VI and VII of this plan. The EDR Coordinator will also seek to resolve discrimination complaints informally and will provide EEO/EDR Plan information to the public upon written request.

IV. OBJECTIVES

Each court unit will develop annual objectives which reflect those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EDR Coordinator explaining how those objectives will be achieved.

V. PERSONNEL PRACTICES

A. Discrimination-Free Workplace

All appointing officers will provide a discrimination-free workplace for their employees and applicants. No employing office will tolerate discrimination or discriminatory harassment in hiring or in any employment actions or conditions, on the basis of race, color, national origin, gender, religion, age, disability and/or sexual orientation. Appointing officers should make available to court employees training and education with respect to equal employment opportunity, including, but not limited to, sexual harassment, subject to available funds for such training.

B. Recruitment

All appointing officers will seek qualified applicants. All vacancies, except those for judicial clerkships and externs, will be publicly announced.

C. Hiring

All appointing officers will make their hiring decisions based upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

D. Promotion

All appointing officers will promote employees, if promotions are available, according to their experience, training, and demonstrated ability to perform duties of a higher level.

E. Advancement

All appointing officers and supervisors will seek, insofar as appropriate and reasonably practical, to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

F. Employee Discrimination Complaints

All appointing officers will adopt the procedures for resolving employment disputes set forth in Part B.

VI. EVALUATIONS

The EDR Coordinator will prepare a compiled annual report for each court unit, summarizing the appointing officers' efforts to provide equal employment opportunities in recruitment, hiring, promotions and advancement. The EDR Coordinator will collect this information through evaluations prepared by all appointing officers, addressing these areas of concern:

A. Recruitment

The report will briefly describe efforts made to bring a fair cross-section of the pool available for the position into its applicant pool, including listing all employment sources used (state employment offices, schools, organizations, etc.). Each appointing officer will also explain the methods used to publicize vacancies.

B. Hiring

The report will identify where recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment with the office when it was offered.

C. Promotions

The report will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.

D. Advancement

The report will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives, such as no vacancies or minimal numbers of qualified applicants, and on all persons in the court who have received relevant training. This report will also include a breakdown according to the race, gender, color, national origin, and disability of the personnel involved on forms to be provided by the Administrative Office of the United States Courts. The report will cover personnel actions occurring in the year ending September 30 and will be submitted to the Administrative Office by November 30 of each year.

VII. ANNUAL REPORT

The EDR Coordinator in each court will submit to the chief judge of the court for his or her approval the annual report for the year ending September 30. The EDR Coordinator for the circuit executive will prepare for the judicial council's approval an annual report for the year ending September 30. The report for the court of appeals or the district will consist of the consolidated reports and data received from each reporting court unit.

The report will describe instances where significant achievements were made in providing equal employment opportunities, identify areas where improvements are needed, and explain factors inhibiting achievement of equal employment opportunity objectives. The report will be the same report as that submitted annually to the Administrative Office of the United States Courts.

The individual court unit reports will be submitted to the Administrative Office of the United States Courts by November 30 of each year. A copy of the reports will also be submitted to the Judicial Council of the Ninth Circuit.

Copies of the annual EEO/EDR reports will be made available to the public upon written request.

VIII. DISTRIBUTION AND PUBLIC NOTICE

Copies of these procedures shall be available to all employees and, upon written request, to applicants for positions of employment with the United States Courts.

Notes—Model EEO Plan

1. The federal government, including the federal courts, is bound by 38 U.S.C. § 4301 pertaining to the employment of individuals with military reserve status. While the federal courts are not required to honor veterans' preference in employment decisions, the federal courts are prohibited from denying hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces." 38 U.S.C. § 4301(b)(3). Federal court employees are also guaranteed re-employment rights if their employment is interrupted by active military duty in any branch of the armed forces, by reserve training activities, or by reporting for examinations to determine their fitness for military service.
2. Further clarification of this definition can be found in 29 CFR § 1614.203. That section provides that "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, breathing, learning and working. Under the standard of "Reasonable Accommodation" the court unit shall reasonably accommodate to the known physical or mental limitations of a qualified disabled applicant or employee unless the court can demonstrate that the accommodation would impose an undue hardship on the court's operations. Such accommodations may include, but shall not be limited to: (1) making facilities readily accessible to and usable by disabled persons, and (2) part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers and interpreters and other similar actions.
3. HIV infection is considered to be a non-interfering disability absent medical and workplace documentation regarding the extent to which the infection may affect job performance, leave, or conduct.
4. Prohibited unwelcome conduct includes offensive sexual flirtations, suggestive comments, sexual innuendo, unwanted physical contact, impeding or blocking movement, repeated requests or pressure for "dates," advances, propositions, insults or verbal abuses of a sexual nature, graphic verbal comments about an individual's body, sexually degrading words describing an individual, humor and jokes about sex or gender-specific traits, or the display of sexually suggestive objects or pictures that are unwelcome or offend the recipient. Prohibited discriminatory conduct also includes non-verbal, suggestive, or sexually insulting actions such as leering, whistling, suggestive sounds, and obscene gestures. Prohibited touching includes any unwelcome touching of a sexual nature, pinching, intentional brushing of the body, sexual assault, and coerced sexual acts.

Sexual harassment does not necessarily have to be directed to a particular employee for an employee to find the action and/or behavior offensive or intimidating, such as when offensive material is posted where others may readily see it. Sexual harassment may occur when a manager or supervisor has created a hostile and abusive working environment for members of a specific sex. Sexual harassment is prohibited whether it is conducted in person, through the mail or other written communication, or telephonically.

5. A “vacancy announcement” is a reasonable attempt to notify applicants and potential applicants about the existence of job vacancies. In some situations this will involve the placement of a job notice in a widely circulated publication, whereas in others it may simply involve an in-house announcement on a bulletin board. The purpose of a vacancy announcement is to afford all possible applicants, including women and minorities, an opportunity to compete for the position(s) in question.
6. For purposes of processing and investigating discrimination complaints in small courts, it would usually be necessary to obtain the services of an employee of another court unit to fulfill these functions to ensure objectivity and avoid any appearance of conflict of interests.